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LEGAL PROTECTION MODEL FOR LAND MANAGEMENT RIGHT PERMIT HOLDERS FOR INVESTMENT IN INDONESIA

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ABSTRACT

The state is the representation of the people to manage the available natural resources and natural wealth, but in return, the efforts will be returned to the people in the form of prosperity. The purpose of this study is to find and develop a model of legal protection for concessionaire of land management rights for investment in Indonesia. The type of research is normative law research, with a legislative approach, conceptual approach, and comparative approach. It uses primary, secondary, and tertiary law as materials. The obtained law materials was processed and analyzed in prescriptive normative. In conclusion, the model of legal protection for concessionaire of land management rights for investment in Indonesia is by integrating an Online Single Submission (OSS) into all institutions/ministries related to licensing land management rights for investment, then in the process, licensing costs with the e-pay system thereby eliminating unofficial costs that are vulnerable. Legal protection for concessionaire of land management rights for investment in Indonesia must be given based on legal certainty through clarity and strictness of regulations.

Keywords: Legal protection model, License holder for land management rights, Investment in Indonesia.

INTRODUCTION

The Preamble of 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution) the 4th paragraph states that the ideals of the Indonesian people are to advance public welfare, educate the life of the nation, and participate in maintaining world reconciliation. The state is given some authority by the people to create synergies in realizing common interests, which are accommodated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The state becomes the people's representation to manage the available natural resources and natural wealth, but as reciprocity of all these efforts will be returned to the people in the form of prosperity.⁵ One of the prosperity can be realized one of them through the development and economic growth in a country through

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⁵ H. Wira Franciska, *Kepastian Hukum Pemegang HGB di Atas HPL Dalam Perjanjian Penjaminan Kredit Perbankan*, Alfabeta, Bandung, 2016, page: 31.

domestic investment and foreign investment through the use and management of land. However, the large number of land cases in Indonesia has led to a decline in investor confidence resulting in slowing economic and social growth in Indonesia compared to Malaysia, Singapore and New Zealand. One of the causes of the many cases of land is the lack of adequate legal protection for permit holders, especially land management for investment in Indonesia.

This can be seen from Indonesia's ranking in this year's Ease of Business (EODB) index. The World Bank records Indonesia's current rating in the Ease of Doing Business (EODB) in position 73 (down 1 rating), which is still far below Malaysia (rank 15), Singapore (rank 2), and New Zealand (ranking 1). From the quality of the land administration index, Indonesia has a value of 11.5 (scale 0-30), far compared to Malaysia which gets 27.5, Singapore has a value of 29, and New Zealand which has a value of 26. Some factors that hamper business ease and the quality of land administration are: many rules overlap with one another, causing investors difficulty translating and following regulations related to land management rights permits for sustainable investment, besides legal certainty and legal protection has not been provided to maximum holders of land management rights for investment.⁶ Another factor is the lack of legal certainty, tax certainty, security, escort and supervision from parties who have the authority in the process of obtaining and running investments in Indonesia. Indonesia invites foreign investment to finance development because income from the tax sector, public savings, and foreign exchange cannot be relied on fully. This is a challenge for Indonesia to create a competitive and sustainable investment climate, which is able to accommodate the interests of the country, investors and the community in the use and management of land for investment. One of them is through granting permission for land management rights for investment that is expected to be able to make land more social and economic benefits that will provide prosperity for the people of Indonesia.

Based on the description above, we can formulate the problem which stated: what is the model of legal protection for holders of land management rights for investment in Indonesia?

METHODS AND RESEARCH

The type of research used is normative legal research, with a statutory approach, conceptual approach, and comparative approach. Using primary, secondary and tertiary law material. The obtained law materials are processed and analyzed in a prescriptive normative analysis.

RESEARCH AND DISCUSSION:

One of the functions of the law is to provide protection to citizens, especially those who are in a weak position due to legal relations or an unbalanced position. Likewise with every activity of licensing management rights for investment, it must be seen as a form of service and balanced legal protection to the public (public service), investors (to foster trust in investing in the host country) and the country (agrarian resources). Legal protection is always

⁶ Tsutomu Hiraishi, Makalah Kuliah Umum “*Arbitration in Investmen Law*”, in University of Mataram, 29th November 2018.

related to power. According to Philipus M. Hadjon, there are two powers which are always a concern, namely government power and economic power. In relation to power, the issue of legal protection is related to legal protection for the people (governed) against those who govern (government), while the problem of economic protection is the protection of the weak and the strong.⁷

There are several reasons why citizens must get legal protection from government actions, among others: first, because in many cases citizens and civil legal entities depend on government decisions, such as the need for permits needed for trading, corporate and mining businesses. Citizens and civil legal entities need legal protection, especially to obtain legal certainty and security guarantees, which are the determining factors for business life; second, the relationship between the government and citizens does not run in an equal position, citizens are weaker than the government; thirdly, various disputes between citizens and the government regarding decisions, as a one-sided government instrument in intervening in the lives of citizens. Acts based on free authority (*vrije bevoegdheid*) will open opportunities for violations of citizens' rights.⁸ With regard to legal protection for holders of land management rights permits for investment, it can be compared to several countries. It shown at Table 1 below:

Table 1: Comparison of land administration in several countries that support investment

No	Country	Quality of the Land Administration Index	Institution/ Ministry	Land Registration System, Publication	Land Rights Type	Period Time	EoDB Rank
1.	Indonesia	11,5	Kementerian ATR/BPN RI	-Torrens - Negative tends Positive	1. Management Land Rights; a. Freehold b. Building Rights on Land c. Right of Use d. Cultivation Right on Land	1.Unlimited; a. Unlimited b 30 Years (can be extended for 20 years) c. 25 Years (can be extended for 20 years) d. 35 Years (can be extended for 20 years)	73

⁷Philipus M. Hadjon, *Perlindungan Hukum dalam Negara Hukum Pancasila, Simposium Politik, Hak Asasi Manusia dan Pembangunan Hukum*, Lustrum VIII, Universitas Airlangga, Surabaya, 1994, page: 1.

⁸H.D. van Wijk/Willem Konijnenbelt, *Hoofdstukken van Administratief Recht*, Vuga, s'Gravenhage, 1995, page: 533-535.

2.	Malaysia	27,5	Minister of Water, Land and Natural Resources	-Torrens -Positive	1.Freehold: a. Grant b.State Lease 2.Leasehold a.Mukim Grant b.Mukim Lease	1. Unlimited: a. land alienated in perpetuity b. a period of years 2. Period of Years a. Perpetuity b. Period of Years	24
3.	Singapore	29	-Minister of Law -Singapore Land Authority	-Torrens -Positive	1. Freehold 2. Leasehold	1. Unlimited 2. 99 & 999 Years	2
4.	New Zealand	26	-Minister for Land Information	-Torrens -Positive	1. Freehold 2. Leasehold 3. Unit Title 4.Cross Lease	1. Unlimited 2. Period of Years 3. Period of Years 4.999 Years	1

*Source: World Bank⁹

Based on the table above, it is known that Indonesia achieved the lowest quality of the land administration index compared to Malaysia, Singapore and New Zealand, by adopting the torrens system (registration of rights) in land registration, only Indonesia has a negative tendency for positive publications (certificates as strong evidence), not as absolute proofs such as Malaysia, Singapore and New Zealand, where each registration of land rights gives rise to an indefeasible title (rights that cannot be contested), and certificates as conclusive evidence (evidence that cannot be refuted by evidence other). The duration of management rights in Indonesia is not limited, but if there is an agreement between the holder of management rights and a third party over the management rights, then based on the agreement other rights arise such as Building Rights (a period of 30 years and can be extended) as well as rights Use (a period of 25 years).

The existence of an agreement between the holder of management rights with a third party (investor) who has obtained a license for investment, the legal protection of the holder of the management right for investment at the time the permit is granted. In the process of obtaining a permit there are still obstacles including; prone to unofficial levies (cost uncertainty) and proximity between the applicant and the licensor also determine the refusal / granting of the permit, so that preventive legal protection must be given to holders of land management rights for investment through supervision and oversight when submitting an application, processing to publication land management rights permit for investment in Indonesia, one of

⁹ <https://www.doingbusiness.org/en/rankings>: Friday, 26th July 2019.

which is online single submission (OSS) integrated with relevant agencies that have the authority to issue management rights permits for investment. Indonesia needs to make changes to the land registration publication system, a certificate as evidence of land registration should be an absolute proof so that it does not cause disputes in the future.

Repressive legal protection for holders of management rights permits for investment can be given with the enactment of a law that specifically regulates the use and utilization of land management rights for investment, where the UUPA is as a *lex generalies* and later the law regarding permits for the utilization and use of land management rights for investment become *lex specialis*. As a comparison, in the land law in Singapore requires paying insurance whose function is to pay compensation to the injured party in the event of fraud from the issuance of a certificate of land rights, so as to provide legal protection to those who have registered the use of land, as well as those who feel loss of a fraud from the issuance of the certificate.

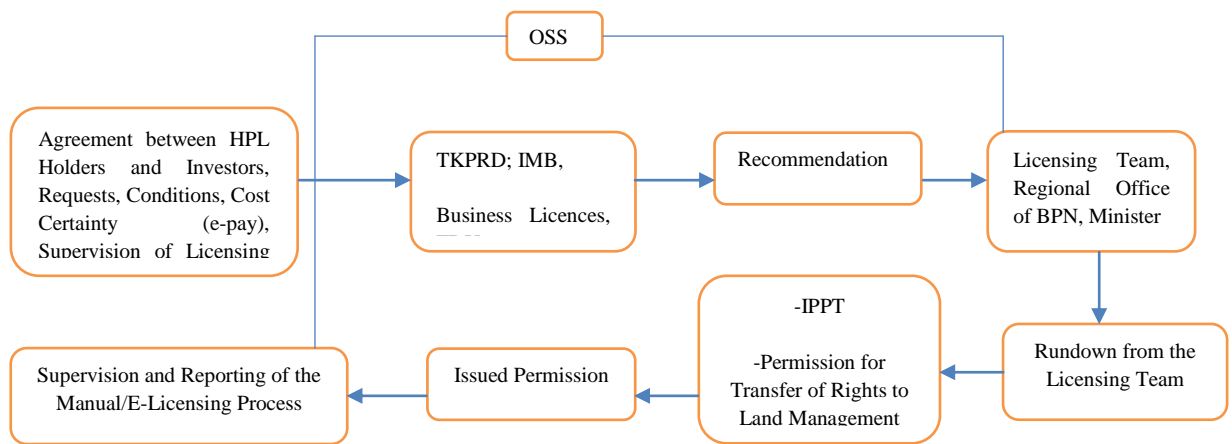
Conflict of authority in the management of the land sector also occurred between the LoGA and Law no. 23 of 2014 concerning Regional Government, caused a tug-of-war between the central government and regional governments in managing the land sector. According to UUPA Article 2 paragraph (2) affairs in the field of land are the authority of the Central Government, Article 2 paragraph (4); the exercise of the state's right to control land can be delegated to autonomous regions, which causes regional governments to act on the basis of complying with the normative provisions of state administration in Indonesia. According to Law No.23 of 2014: the land sector is part of the implementation of regional autonomy with right to manage land for investment and licensing instruments.

The existence of a conflict of regulations related to licensing rights over land management rights for investment, licensing instruments are not fully adequate, such as; unpreparedness of the system (technology) online single submission (OSS) that has not been fully integrated into all regions, the unequal attitude in making policies that depend on the needs and conditions in each region.¹⁰ From the point of view of entrepreneurs (investors) in Indonesia, there is no law of one price related to the process of obtaining licenses which makes it vulnerable to cost uncertainty, legal uncertainty, tax uncertainty, and not yet maximum legal protection for holders of land rights permits on rights land management for investment in Indonesia.¹¹

Compared to the licensing and registration process for land rights, Singapore has provided legal certainty and legal protection through its non-overlapping regulations. This means there is no conflict between one rule and another regulation related to licensing land management rights for investment.

¹⁰ Gatot Dwi Hendro Wibowo, *Dinamika Hukum Lingkungan Dan Tata Ruang*, Pustaka Bangsa, Mataram-NTB, 2014, page: 45.

¹¹ Interview with Mr. Nyoman Suweca, Governing Board of Kamar Dagang Indonesia/KADIN-Bali, 31st March 2018.



The author offers a model of legal protection for holders of land management rights permits for investment by integrating OSS into all institutions / ministries related to licensing land management rights for investment, then in the process, licensing costs with the e-pay system thereby eliminating unofficial costs that are vulnerable to occur. Legal protection for holders of land management rights permits for investment in Indonesia must be provided from legal certainty through clarity and strictness of regulations by providing the UUPA as an umbrella law/ umbrella act related to land management rights permits for investment as well as synchronizing the entire legislation related to the term of the rights. land rights over land management rights for investment.

CONCLUSION

Licensing as a function of state administration, contains aspects of creating a right, in providing legal protection to holders of land management rights for investment in Indonesia, in addition to online single submission (OSS) has not been fully integrated, resulting in conflicts between the Central Government and Regional Governments in the management of fields land. Inequality in attitude in making policies raises norms of conflict and conflicts of interest that hinder economic growth and development for the welfare of the people, the model of legal protection for holders of land management rights for investment in Indonesia is integrated into the OSS to all institutions / ministries related to licensing land management rights for investment, then in the process, licensing costs with the e-pay system thereby eliminating the unofficial costs that are vulnerable. Legal protection for holders of land management rights permits for investment in Indonesia must be provided from legal certainty through clarity and strictness of regulations by providing the UUPA as an umbrella law/ umbrella act related to land management rights permits for investment as well as synchronizing the entire legislation related to the term of the rights land over land management rights for investment.

SUGGESTION

OSS optimization needs to be done that is connected with all agencies related to the issuance of land management rights for investment, synchronization of regulations from the center to the regions so that it is more assertive and clearer to support the improvement of licensing apparatus as public servants who can avoid conflicts of interests in the licensing process in Indonesia.

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